

Remarks/Arguments

Claims 11-19 are pending.

Claim 11 has been amended to recite i) "consisting essentially of", and ii) 'wherein the osmolyte is ectoine or hydroxyectoine or a pharmacologically compatible salt thereof' present in claim 13 (now canceled).

Claim 16 has been amended to clarify applicant's invention to now recite 'liposomally' capsuled.

Claim 12 has been canceled.

The rejection of claims 11 and 14-19 under 35 USC 112, first paragraph, are believed to have been overcome of Applicant's amended claim 11 that recites 'wherein the osmolyte is ectoine or hydroxyectoine or a pharmacologically compatible salt thereof.'

The rejection of claim 16 under 35 USC 112, second paragraph, is believed to be overcome by Applicant's present amendment.

The rejection of claims 11, 14 and 17 under 35 USC 102(b) as being anticipated by Sauermann (DE 10133202 A1), is respectfully traversed. Applicant's amended claim 11 now recites 'wherein the osmolyte is ectoine or hydroxyectoine or a pharmacologically compatible salt thereof.' In this respect Sauermann does not disclose any of the osmolytes, as claimed. Accordingly, this rejection should be withdrawn.

The rejection of claims 15-16 under 35 USC 103(a) as being unpatentable over Sauermann is respectfully traversed. Sauermann does not teach or suggest the osmolytes of claim 11. Accordingly, this rejection should be withdrawn.

The rejection of claims 11, 14, and 17-19 under 35 USC 103(a) as being unpatentable over Buchholz is respectfully traversed. Applicant's amended claims recite "consisting essentially of." As noted in the MPEP, the transitional phrase "consisting essentially of" limits the scope of a claim to the specified materials or

steps "and those that do not materially affect the basic and novel characteristic(s)" of the claimed invention. In the instant rejection, Buchholz is evidence that the presence of flavonoids materially affects the basic and novel characteristic of applicant's claimed invention. Accordingly, Applicant's amended claims now reciting "consisting essentially of" overcomes this rejection.

No other issues remaining, applicant believes the claims are all in condition for allowance and respectfully solicits a Notice of Allowance.

The Commissioner is hereby authorized to charge payment of any fees required associated with this communication or credit any overpayment to Deposit Account No. 50-3881. If an extension of time is required, please consider this a petition therefor and charge any additional fees which may be required to Deposit Account No. 50-3881.

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Respectfully submitted,

By 
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